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असाधारण

EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on 31st July, 2009:—

I

BILL NO. X OF 2009

A Bill to provide for punishment for the offences relating to incest and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Incest Offences Act, 2009.

(2) It shall come into force with immediate effect.

2. In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means in the case of a State, the Government of that State and in other cases, the Central Government;

(b) "prescribed" means prescribed by rules made under this Act;

(c) "sexual exploitation" includes fondling, sexually explicit remarks, avoidable and unwarranted physical contact, willfully touching and patting, forcing for the use of pornographic material and molestation;

Short title and
commence-
ment.

Definitions.

(d) terms used in this Act and not defined in this Act but defined in the Indian Penal Code, 1860 or the Code of Criminal Procedure, 1973 shall have the same meanings respectively assigned to them in those laws.

45 of 1860.
2 of 1974.

Incest
offences.

3. Whoever knowingly has or attempts to have sexual intercourse with another person, who is a close family member shall be guilty of incest and shall be punished with rigorous imprisonment for a term which shall not be less than ten years and shall also be liable to a fine:

Provided that if the close family member is a child under eighteen years of age, the offender shall be punished with life imprisonment.

(2) Whoever knowingly does or attempts to sexually exploit any other person, who is a close family member shall be punished with rigorous imprisonment for a term not less than five years, which may extend upto seven years, and shall also be liable to a fine.

(3) For the purposes of sub-sections (1) & (2) the Court shall not take cognizance of the fact that the act of sexual intercourse or attempt of sexual intercourse or sexual exploitation has happened with the consent of the person.

Explanation. — For the purposes of this Act "close family members" means following persons who are members of a victim's family by birth:—

(a) a parent or grandparent, of either sex.

(b) a child or other lineal descendent.

(c) a brother or sister including half-brother or half-sister.

Burden of
proof.

4. Notwithstanding anything contained in any other law, for the time being in force, in any trial under this Act, the burden of proof as to the innocence shall be on the accused and the victim shall have the right to lead evidence in rebuttal.

Proceedings to
be in-camera.

5. The proceedings under this Act shall be tried by Special Courts as far as possible before a woman magistrate and in-camera if it is so desired by the victim.

Statement of
victim to be
recorded at
residence

6. Any statement of the victim under this Act shall be recorded at her or his residence or at the place of her or his choice and as far as possible by a woman police officer in the presence of the victim's guardian or social worker of the locality.

Offences to be
cognizable and
non-bailable

7. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under this Act shall be cognizable and non-bailable.

2 of 1974.

Bar on
granting
anticipatory
bail.

8. Notwithstanding anything contained in any other law, for the time being in force, no court other than a High Court or the Supreme Court of India shall have the authority to grant anticipatory bail to any person accused of committing an offence under this Act.

Provisions of
the Code of
Criminal
Procedure to
be applied.

9. Save as provided under this Act, the provisions of the Code of Criminal Procedure, 1973 shall be applicable to any trial under this Act.

2 of 1974

Power to
remove any
difficulties.

10. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Gazette of India, make such provisions, not inconsistent with the provisions of this Act, as it deems necessary or expedient for removing the difficulty.

Act to have
overriding
effect

11. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force relating to incest.

Power to make
rules.

12. The Central Government may, by notification in the Gazette of India, make rules for carrying out the purpose of this Act.

STATEMENT OF OBJECTS AND REASONS

As of today, there is no law on incest offences in India. Any incidence of incest is treated as rape and if it is the abuse of a boy, it is covered under Section 377 of the Indian Penal Code (that criminalises homosexuality). Last year, a Mumbai court let off a father who raped his daughter as the heinousness of his crime was not recognised as a separately punishable offence in our country. Also, the particular problem of incest going under-reported is more prevalent in India because the family is almost considered sacred and abuse, if it happens, is met with disbelief and denial. At times, even the judges do not believe that a girl or boy can be abused by her or his father or relatives. Activists demanding a law to tackle incest believe that it is a reflection of the society's refusal to acknowledge that it exists. The society is in a state of denial that incest does exist, whereas the bare truth is that it is prevalent in our society and only a miniscule number of cases are reported.

In contrast, many developed countries recognise incest as a serious crime. The United Kingdom has had a law on it since 1908, which provides punishment with imprisonment up to 14 years, as do laws in Canada, Germany, Hungary, Ireland, Israel, Italy, the Netherlands, Brazil and a host of other countries have laws pertaining to incest. In the United States, punishment varies from State to State. Incest is more common in India than in other countries as there is no fear of the law of the land.

Children's rights activists have been demanding a specific law on incest for quite some time now. The demand was more vociferous, when Section 376 of the Indian Penal Code (pertaining to rape) was amended, to include policemen and hospital and prison staff who abuse women in their custody, the issue of incest—where a parent or relative abuses a child in his or her care—was over looked. It is difficult to fathom the agony and trauma of a child who goes through molestation at the hands of a trusted one. The child suffers this stigma throughout his or her life and has to re-live the pain and trauma over and over again. It is high time, therefore, that a strict and separate law is enacted to counter incest in our society.

Hence this Bill.

SHOBHANA BHARTIA

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of this Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only. The delegation of legislative power is, therefore, of a normal character.

II

BILL NO. XIII OF 2009

A Bill to provide for a total ban on use and import of white asbestos in the country and to promote the use of safer and cheaper alternative to white asbestos and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title
and
commencement

1. (1) This Act may be called the White Asbestos (Ban on Use and Import) Act, 2009.

(2) It shall come into force with immediate effect.

Definitions

2. In this Act, unless the context otherwise requires,—

(a) “appropriate day” means the day fixed by the Central Government to ban the use and import of white asbestos which shall be within one month of the coming into force of this Act;

(b) “prescribed” means prescribed by rules made under this Act.

3. Whereas the object of the Act is such as to provide for a ban on use and import of white asbestos, which is a fibrous mineral and has been reported to be highly carcinogenic, it is hereby declared that the Act propose for the ban on the use and import of white asbestos is in the public interest.

Declaration of ban on use and import of white asbestos in the public interest.

4. (1) On and from the appointed day, there shall be a ban on the use and import of white asbestos;

Ban on use and imports of white asbestos.

(2) Whoever imports or uses white asbestos after the appointed day shall be guilty of violating the provisions of this Act.

5. Whoever found guilty of violating the provisions of this Act shall be punished with imprisonment, which may extend to three years or with fine, which may extend to rupees two lakh or with both.

Penalty.

6. (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Offences by Companies.

Provided that nothing contained in this sub-section shall render any such person liable to punishment, if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other Officer of the company such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section:—

(i) “company” means anybody corporate and include a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm.

7. The Central Government shall promote and encourage the use of safer and cheaper alternative to white asbestos and provide sufficient fund for research and development in the field in such manner as may be prescribed.

Central Government to Provide safer and cheaper alternative to white asbestos.

8. If any difficulty arise in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette make such provisions, not inconsistent with the provisions of this Act as appears to it to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

Provided that no such orders shall be made after the expiry of the period of three years from the date of commencement of this Act.

9. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force relating to use and import of white asbestos.

Act to have overriding effect.

10. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules

STATEMENT OF OBJECTS AND REASONS

The white asbestos is highly carcinogenic even the World Health Organisation has reported that it causes cancer. It is a rare fibrous material that is used to make rooftops and break linings. More than fifty countries have already banned the use and import of white asbestos. Even the countries that export it to India prefer not to use it domestically. But in our country, it is imported without any restriction. Canada and Russia are the biggest exporters of white asbestos. In 2007, Canada exported almost Ninety five percent of the white asbestos it mined and out of it forty-three percent was shipped to India. It is quite surprising that our country is openly importing huge quantity of a product, which causes cancer. This is despite the fact that safer and almost cheap alternatives to asbestos are available in the country. Instead of importing a hazardous material, it will be better if we spend some money in research and development and use environment friendly product. In view of the above, there is an urgent need for a total ban on the import and use of white asbestos and promote the use of alternative material.

Hence this Bill.

VIJAY JAWAHARLAL DARDA

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides that the Central Government shall provide funds for research and development for alternative products to white asbestos. The Bill, if enacted, would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of rupees twenty crore would be involved from the Consolidated Fund of India.

A non-recurring expenditure of rupees five crore will also be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the matter will relate to details only, the delegation of legislative powers is of normal character.

III

BILL NO. XII OF 2009

A Bill to provide for compulsory medical preparedness in schools to deal with medical emergencies in the event of injury or sickness to a student in schools; compulsory appointment of doctors and nurses in schools; first aid training to teachers and staff and provision of life saving equipments and medicines in schools and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Compulsory Medical Preparedness in Schools Act, 2009

(2) It extends to the whole of India.

(3) It shall come into force at once.

Short title
extent and
commence-
ment.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “appropriate Government” means in case of a State, the Government of that State and in all other cases, the Central Government;

(b) “doctor” means a medical practitioner registered with the Medical Council of India;

(c) “prescribed” means prescribed by rules made under this Act;

(d) “school” means any Government or private institution providing education upto the standard of five and above and includes any aided institution.

Central Government to frame policy and issue guidelines.

3. (1) The Central Government shall, within six months of the commencement of this Act frame a health policy for schools prescribing norms to be followed in case of medical emergency in schools.

(2) The Central Government shall, in consultation with Medical Council of India, issue guidelines and directions with regard to medical preparedness in schools, which shall be binding on all schools.

Schools to be prepared for medical emergency.

4. The appropriate Government shall ensure that every school within its jurisdiction is fully prepared to deal with any medical emergency in accordance with the norms prescribed in this behalf or directions or guidelines issued in this regard.

Schools to appoint doctor and nurse.

5. The appropriate Government shall ensure that every school shall appoint at least one qualified doctor and one nurse and shall also have a full-fledged first-aid centre with such life saving equipment and medicines as may be prescribed.

School to maintain data of sick students.

6. (1) Every school shall maintain data of each student who is suffering from any life-threatening disease and it shall be a duty of the parent of the student to give such information to the school in such manner as may be prescribed.

(2) In the event of a child suffering from any disease and under going medication, it shall be duty of every parent to keep a slip in the bag of their child mentioning the kind of medicine being taken by the child.

School to transport the child to nearby hospital in medical emergency

7. (1) Every school shall in such manner as may be prescribed make arrangement with any nearby Government or private hospital for the purpose of treating a student in medical emergency in that hospital immediately.

(2) For the purpose of sub clause (1) every school shall keep a dedicated vehicle for transportation of the student to the nearby hospital.

Teacher and staff to undergo first-aid training.

8. The appropriate Government shall ensure that every teacher and staff of the school has undergone a basic level of first-aid training to help the student in case of medical emergency.

Monitoring of medical preparedness.

9. The appropriate Government shall ensure monitoring and inspection of medical preparedness of schools within their jurisdiction and review it after every two years.

Schools not to increase fee for arranging medical preparedness

10. The appropriate Government shall ensure that no school increases its fee or charges any extra amount for arranging medical preparedness or refuse admission to any child if he is having illness which does not affect other students.

Central Government to provide funds.

11. The Central Government shall, after due appropriation made by Parliament, in this behalf provide requisite funds for the purpose of this Act.

12. Whoever found guilty of violating the provisions of this Act shall be punished with imprisonment, which may extend to three years or with fine which may extend to rupees two lakh or with both. Penalty.

13. If any difficulty arise in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette make such provisions, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty: Power to remove difficulties.

Provided that no such orders shall be made after the expiry of the period of three years from the date of commencement of this Act.

14. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force relating to medical preparedness in schools and save as provided, the provisions on this Act shall be in addition to, and not in derogation of any other law for the time being in force on the subject. Overriding effect of savings.

15. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. Power to make rules.

STATEMENT OF OBJECTS AND REASONS

Incidents of medical emergency due to injury caused to the students or their sickness in schools are very common now a days. Of late, many incidents have come to light wherein students lost their lives for want of proper medical preparedness in schools. One such incident happened in a prestigious school of the capital wherein a young girl of sixteen years lost her life as she was not given any first-aid in school and reportedly there was delay in transporting her to the hospital. As of now, even the Department of Education does not have any health policy for schools resulting in every school following its own set of norms to deal with medical emergency. In fact, in majority of the schools there is no proper arrangement for medical emergency. As of now the Government has not issued any direction to schools in this regard. Accidents or medical emergencies are quite common in schools. There is an urgent need that proper attention should be paid towards medical preparedness of schools in dealing with such emergencies. The schools should have a qualified doctor and nurse with a full-fledged first-aid centre along with life saving equipment and medicines. The schools must make some arrangement with a nearby hospital to transport the student to the hospital in the eventuality of any accident and a dedicated vehicle should be there to transport the student immediately. The Government should also come out with a policy in this regard so that a uniform practice is followed in all the schools in the country.

The Bill seeks to achieve above objectives.

VIJAY JAWAHARLAL DARDA

FINANCIAL MEMORANDUM

Clause 11 of the Bill provides that the Central Government, shall after due appropriation, provide funds for the purposes of this Act. The Bill, if enacted, would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of rupees one hundred crore would be involved from the Consolidated Fund of India.

No non-recurring expenditure is likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 15 of this Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the matter will relate to details only, the delegation of legislative powers is of normal character.

IV

BILL NO. XI OF 2009

A Bill further to amend the Companies Act, 1956

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 2009. Short title and
commencement.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In Section 2 of the Companies Act, 1956 hereinafter referred to as the principal Act, after clause (19AA) the following clause shall be inserted, namely,— Amendment of
section 2.

19AAA. “Independent Director” means an Independent Director as defined in section 255A.
3. After section 255 of the principal Act, the following section shall be inserted, namely,— Insertion of
new section
255A.

255A. “Independent Director”, in relation to a company, means a non-executive director of the company, other than a nominee director,—

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) who, neither himself nor any of his relatives—

(i) has or had any pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or its promoters, or directors amounting to ten per cent or more of its gross turnover or total income during the two immediately preceding financial years or during the current financial year;

(ii) holds or has held any senior management position, position of a key managerial personnel or is or had been employee of the company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(iii) is or has been an employee or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company,

or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;

(iv) holds together with his relatives two per cent or more of the total voting power of the company; or

(v) is a Chief Executive or director, by whatever name called, of any non-profit organization that receives twenty-five per cent or more of its income from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company; or

(c) who possesses such other qualifications as may be prescribed.

Explanation—For the purposes of this section, "nominee director" means a director nominated by any institution in pursuance of the provisions of any law for the time being in force, or of any agreement or appointed by any Government, to represent its shareholding.

4. After section 312 of the Principal Act, the following section shall be inserted namely,—

Insertion of
new section
312A.

Protection to
Independent
Directors
from criminal
liability

312A. (i) Notwithstanding anything to the contrary contained in this act or in any other Law for the time being in force, any Independent Director on the Board of Directors of a Public Limited Company shall not be liable or punishable for any act or omission by the Company or any officer of the Company which constitutes a breach or violation of any of the provisions of this Act or any other law for the time being in force.

(ii) No arrest warrant shall be issued against an Independent Director without authorization by a judge of the rank of the District Judge, who shall give to the Independent Director an opportunity of being heard before issuing such authorization:

Provided that the aforesaid provisions in this Section shall not apply if such Independent Director was directly involved in or responsible for such breach or violation or such breach or violation had been committed with this knowledge or consent or he was guilty of gross or wilful negligence or fraud in relation thereto.

STATEMENT OF OBJECTS AND REASONS

In view of recent developments in Corporate Sector the role of independent Directors has assumed importance.

It is also observed that non executive independent Directors are often harassed for the wrong doings of the full time Executive Directors who are hands on with the day to day administration of the Companies. It has therefore become necessary to immediately make the provisions in the existing Companies Act to effectively protect the interest of the community of independent Directors in the larger interest of healthy growth of Corporate Governance in the corporate Sector. In the absence of such provisions it will be very difficult for the Corporate Sector to attract eminent persons with professional knowledge and unquestionable integrity to be independent Directors on their Board.

In view of this it has been considered necessary to amend the Companies Act, 1956 by inserting a definition of independent Director at appropriate places in the Companies Act, 1956 and by inserting a new Section providing protection to independent Directors in respect of any act or omissions by the Company or any of its officers which constitutes a breach or violation of any of the provisions of the Companies Act or any other law.

Hence this Bill.

Y. P. TRIVEDI

V

BILL NO. XVI OF 2009

A Bill further to amend the Protection of Women from Domestic Violence Act, 2005.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title
and com-
mencement.

1. (1) This Act may be called the Protection of Women from Domestic Violence (Amendment) Act, 2009.

(2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

Amendment
of Section 18.

2. After Section 18 of the Protection of Women from Domestic Violence Act, 2005, the following proviso shall be inserted, namely:—

“Provided further that the Commissions constituted to protect the interest of women under the State legislations and also service providers recognized, if any, under such legislations, may also issue protection orders under the above section, which shall remain in force for a period of eight days, from the date of the order, until a Magistrate having jurisdiction to decide in the matter of domestic violence in question, takes cognizance of any complaint filed by the aggrieved person and passes an appropriate protection order in the matter, whichever is earlier.”

STATEMENT OF OBJECTS AND REASONS

Parliament has enacted the Protection of Women from Domestic Violence Act, 2005, which has empowered magistrate to pass orders in the nature of Protection Orders under Section 18, Residence Orders under Section 19, Orders for Monitory Relief under Section 20; Custody Orders under Section 21 and Compensation Orders under Section 22, etc. However, till the time an aggrieved person approaches a Protection Officer to file a case before magistrate on behalf of an aggrieved person, it takes a considerable time and aggrieved person gets no protection whatsoever, till that time.

Tendency among aggrieved person is to first approach the National Commission for Women appointed under the National Commission for Women Act, 1990 or a similar State Commission appointed under the respective State legislations. These Commissions have powers to hear the parties and arrive at settlement in the event there is an agreement between parties. The next course open to these bodies is to advise the aggrieved person to approach Protection Officer or Police Authorities, as the case may be.

In this context, it is proposed to bring the commissions appointed under the State legislations within the ambit of the Protection of Women from Domestic Violence Act and extend the powers of issuing Protection Order to a limited extent also to the Commissions and Service Providers under the said State legislations, so that, aggrieved persons approaching the Commissions in the first instance can also get relief from the Commissions or Service Providers, as the case may be instead of, merely, an advice or guidance.

Hence, this Bill.

SHANTARAM LAXMAN NARK

VI

BILL NO. XIV OF 2009

A Bill further to amend the Special Economic Zones Act, 2005.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title and
commence-
ment.

1. (1) This Act may be called the Special Economic Zones (Amendment) Act 2009.

(2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

Insertion of
new section
24A.

2. After section 24 of the Special Economic Zones Act, 2005, the following section shall be inserted, namely:— 28 of 2005.

Penalty on
misrepresentation
of facts.

“24A. If any “developer”, “co-developer” or “entrepreneur” misrepresents any material fact before any authority, constituted under the Act, he shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to five lakhs rupees.

STATEMENT OF OBJECTS AND REASONS

Ever since, the Special Economic Zones Act, 2005, and the schemes prepared under the Act have come into force, respective state governments have recommended the cases of various developers, co-developers and entrepreneurs for establishing Special Economic Zones in their respective States.

Since the concept involves grant of considerable amount of land to the applicants, with a number of facilities, concessions and tax exemptions, number of applicants seeking to establish SEZs, is increasing, although, world-wide recession has reduced the number of applicants to some extent, in recent times.

However, since a number of procedural formalities are involved in obtaining approvals/permissions/licenses under the Act, there may be cases where applicants may be tempted to misrepresent facts before the authorities under the Act.

Land is becoming a scarce commodity, and, therefore, it cannot be allowed to be misused in the name of establishing units or projects under the Act. There has been a criticism that many a developers intend to apply for projects in the name of Special Economic Zones but their object tends to be, clandestinely for commercial purposes. Such applicants exaggerate and misrepresent the requirement of land before the authorities. Some also intend to sublet the rights over the land without the permission of the authorities, while, others give misleading projection regarding the export potentials of their products. Some applicants also lack basic potential to establish such projects and are expert in manipulating vital figures and facts. In all such matters, element of misrepresentation, remains the main culprit, and, therefore, such acts should not go unnoticed and unpunished.

Hence, this Bill.

SHANTARAM LAXMAN NAIK

VII

BILL NO. XVII OF 2009

A Bill to provide for the integrated development of the desert, drought prone and backward areas which are poverty stricken, underdeveloped and lag behind in the economic, social, educational, infrastructural and industrial fields particularly in the States of Rajasthan, Gujarat, Orissa, Bihar, Jharkhand, Andhra Pradesh, Chhattisgarh, Maharashtra, etc. by establishing an autonomous Central Authority with the mandate of assuring speedy development of such areas and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the sixtieth Year of the Republic of India as follows:—

Short title,
extent and
commencement.

1. (1) This Act may be called the Desert, Drought Prone and Backward Areas (Integrated Development) Act, 2009.

(2) It extends to the whole of India.

(3) It shall come into force with immediate effect.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “appropriate Government” means in the case of a State, the Government of that State and in other cases, the Central Government;

(b) "authority" means the Desert, Drought Prone and Backward Areas Development Authority established under section 4;

(c) "backward areas" include the desert and drought prone areas with very low or scanty rainfall and the areas which are economically, industrially, educationally and socially lagging behind from the rest of the country and so declared by Central Government by notification in the Official Gazette;

(d) "prescribed" means prescribed by rules made under this Act.

3. (1) The Central Government shall, as soon as may be, by notification in the Official Gazette, formulate a long term national policy for the integrated development of the backward areas and in particular those areas which are desert and drought prone which shall be implemented by the Authority.

Long term national policy for backward areas.

(2) The appropriate Government shall, by notification in the Official Gazette, declare such areas within its territorial jurisdiction, which in its opinion are backward and require priority attention for integrated development and furnish the information to the Central Government as well as to the Authority.

4. (1) The Central Government shall, as soon as may be, by notification in the Official Gazette, establish an Authority to be known as the Desert, Drought Prone and Backward Areas Development Authority for carrying out the purposes of this Act.

Establishment of the Desert, Drought Prone and Backward Areas Development Authority.

(2) The Authority shall be a body corporate, by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property both movable and immovable and to contract and shall by the said name sue and be sued.

(3) The headquarter of the Authority shall be at Jaipur in the State of Rajasthan and the Authority may, with the consent of the appropriate Government establish subordinate offices at other places in the country.

5. (1) The Authority shall consist of the following members, namely:—

Composition of the Authority.

(a) the Prime Minister who shall be the *ex officio* chairperson of the Authority;

(b) two vice-chairpersons,—

(i) the Deputy Chairman of the Planning Commission; and

(ii) to be appointed by the Central Government from amongst the members of the Authority in such manner as may be prescribed;

(c) five members of Parliament of whom three shall be from Lok Sabha and two from Rajya Sabha to be nominated by the Presiding Officers of the respective Houses;

(d) twelve members to be appointed by the Central Government representing the Planning Commission and Ministries or Departments of Agriculture, Agro and Rural Industries, Rural Development, Industry, Finance, Telecommunications, Railways, Road Transport and Highways, Human Resources Development, Power and Water Resources of the Central Government; and

(e) not more than five members to be appointed by the Central Government by rotation in the alphabetical order to represent the Governments of the States having most of the backward areas.

(2) The Authority shall follow such procedure for holding its meetings and the quorum for such meetings shall be such as may be prescribed.

(3) The Authority shall have a Secretariat consisting of such officers, employees and establishment with such conditions of service, emoluments and perks as may be prescribed and determined from time to time for the efficient functioning of the Secretariat of the Authority.

Funds of the
Authority.

6. The Central Government shall provide, from time to time, after due appropriation made by Parliament, by law, in this behalf, adequate funds for carrying out the purposes of this Act and for the administrative expenses of the Authority.

Authority to
implement
long term
national
policy for
backward areas
and ensure
integrated
development
of such areas.

7. (1) It shall be the duty of the Authority to implement the long term national policy formulated under this Act for backward areas and ensure integrated development of the backward areas by undertaking such special steps as it may deem necessary and expedient to do so for the overall development of such areas.

(2) Without prejudice to the generality of the foregoing provisions, the Authority shall initiate measures for the integrated development particularly to ensure industrial growth with immunity of investments and various concessions by providing good and viable infrastructure pertaining to roads and highways network, railways, communication network, agriculture and agro industries, irrigation facilities through watershed projects, constructing wells, bore wells, canals, ponds and other traditional water bodies, power projects based on thermal, solar, hydal and wind energies, forests, promoting livestock rearing, poultry, piggery, orchards, cooperatives, cottage and village industries, health services, family welfare, educational facilities, network of PDS, tourism, vocational avenues and such other activities as the Authority may deem necessary for the integrated development of backward areas.

(3) The Authority in particular shall initiate measures to provide safe drinking water in abundance to the people of backward areas of the country.

Appropriate
Government to
cooperate with
Authority.

8. It shall be the duty of the appropriate Government to provide requisite co-operation to the Authority in undertaking its development work in the backward areas within the territorial jurisdiction of such Government.

Power to
remove
difficulty.

9. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty.

Annual Report
of the
Authority.

10. The Authority shall submit an annual report, in such form and in such manner, as may be prescribed, of its activities of development undertaken for the purposes of this Act to the President of India who shall cause the Report to be laid before both the Houses of Parliament along with action taken thereon by the Central Government as soon as it is received.

Act to
Supplement
other laws.

11. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matters dealt with in this Act.

Power to
make rules.

12. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

Ours is a vast country. There are desert areas, which are prone to famines and droughts. The rainfall in such areas is generally very scanty resulting in severe shortage of drinking water. Such areas are mostly in Rajasthan and Gujarat where even drinking water is a luxury. Most of these areas are in rural and tribal belts where people are poverty stricken, debt ridden and do not have any means of employment as there are no industries and agriculture is not dependable as it is affected by the vagaries of monsoon. Such areas are chronically backward in our country. In the eastern region, vast areas of Orissa, Bihar, Jharkhand, West Bengal, Eastern U.P.; entire north-eastern region; in the Central India Chhattisgarh, Madhya Pradesh; in the western parts Vidarbha, Marathwada, Saurashtra, Kutchh desert and large parts of Rajasthan; in Southern parts Telangana, Mehboob Nagar, Rayalseema in Andhra Pradesh and areas in other Southern States are still most backward. It is really a matter of concern that even after more than five decades of Independence and implementation of nearly ten five year plans, these areas are still underdeveloped, backward and afflicted with extreme poverty, hunger and sufferings. Due to consistent neglect and apathy of the Central and State Governments these areas are backward. No industries have come up in these areas in the absence of requisite infrastructure. The agriculture is in shambles; rainwater is not harvested and traditional water bodies have vanished which has turned these areas into drought prone and famine prone. The backwardness and non-development of such areas has given rise to demand for creation of new States like Vidarbha, Gorkhaland, Telangana, Harit Pradesh, Bodoland, Bundelkhand, etc. as it is thought that by creating new States, the backwardness of the areas can be removed.

Hence, it has become necessary to develop such desert, drought prone and backward areas of the country for which special efforts have to be made through long term action plan. It is felt that an autonomous Authority should be created to implement the action plan and integrated development of such areas. This will be in the larger interest of our nation.

Hence this Bill.

SANTOSH BAGRODIA

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for the establishment of the Desert, Drought Prone and Backward Areas Development Authority. Clause 6 makes it mandatory for the Central Government to provide adequate funds for the purposes of the Bill. The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. The actual requirement cannot be assessed at this juncture but it is estimated that a sum of rupees ten thousand crore may involve as recurring expenditure per annum.

Non-recurring expenditure to the tune of five thousand crore may also involve.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

VIII

BILL NO. XVIII OF 2009

A Bill to provide for proper care of senior citizens who are destitute by their kith and kins and the Government and for protection of lonely or old couples by way of appropriate security measures by local police, and for other welfare measures and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows: —

Short title
extent and
commence-
ment.

1. (1) This Act may be called the Destitute and Needy Senior Citizens (Care, Protection and Welfare) Act, 2009.

(2) It extends to the whole of India.

(3) It shall come into force with immediate effect.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means in the case of a State, the Government of that State and in other cases, the Central Government;

(b) "destitute senior citizen" means an old person who has become infirm due to old age or chronic ailment and who has no independent and adequate means of livelihood for his subsistence;

(c) "prescribed" means prescribed by rules made under this Act;

(d) "senior citizen" means any person who has completed sixty years of age.

3. (1) Notwithstanding anything contained in any other law for the time being in force, it shall be the duty of the kith and kins of senior citizen to take care and support such citizen in his old age.

Duty of kith and kins of senior citizen.

(2) The kith and kins of a senior citizen who fail to comply with the provisions contained in sub-section (1) shall forfeit their right to succeed the senior citizen in any manner after the death of such a senior citizen.

Explanation—For the purposes of sub-sections (1) and (2) the kith and kins include sons, daughters and other heirs and successors of the senior citizens.

4. (1) Every destitute senior citizen shall, on an application made in the prescribed form to the appropriate Government be paid rupees one thousand per mensem as subsistence allowance by such Government in whose jurisdiction such senior citizen permanently resides.

Subsistence allowance to destitute senior citizens.

(2) The subsistence allowance referred to in sub-section (1) shall be subject to alteration on the basis of the prevailing price index as may be determined by the Central Government.

(3) The procedure to be followed in granting and payment of subsistence allowance under this Act shall be such as may be prescribed.

5. (1) The appropriate Government shall establish such number of Senior Citizen Homes at conspicuous places, as it may deem necessary for board and lodging of needy senior citizens in such Homes.

Establishment of Senior Citizen Homes.

(2) The appropriate Government shall provide all necessary facilities of daily life in each Senior Citizen Home for the benefit of senior citizens residing therein.

(3) The appropriate Government shall also provide free medical aid and means of entertainment to the inhabitants of the Homes established under sub-section (1).

(4) The senior citizens lodged in Senior Citizen Homes shall not be entitled to subsistence allowance referred to in section 4 of this Act.

6. (1) Notwithstanding anything contained in any other law for the time being in force, the local police of every district headquarter shall keep a record of senior citizens residing within its jurisdiction in such manner as may be prescribed.

Protection of senior citizens by local police.

(2) It shall be the duty of the area Station House Officer of the local police to,—

(a) verify the character and antecedents of the domestic servant or any domestic help engaged by any senior citizen or lonely old couple residing within his jurisdiction in such manner as may be prescribed; and

(b) provide adequate security to every lonely senior citizen or lonely old couple residing within his jurisdiction.

7. The Appropriate Government shall also undertake the following welfare measures for the senior citizens, namely:—

Other Welfare measures to be taken for Senior Citizens.

(a) to provide financial assistance at nil or least minimal interest to attain financial freedom;

(b) to provide free medical and health care facilities;

(c) concessional travel by road, rail and air; and

(d) such other measures as may be prescribed.

Central Government to provide funds for the purposes of the Act.

8. The Central Government shall, after due appropriation made by Parliament in this behalf, provide adequate funds to the State Governments for carrying out the purposes of this Act.

Overriding effect of the Act.

9. The provisions for this Act and rules made thereunder shall have effect, notwithstanding anything inconsistent therewith, contained in any other law for the time being in force, but save as aforesaid the provisions of this Act shall be in addition to and not in derogation of any other law for the time being applicable to senior citizens.

Power to remove difficulties.

10. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty.

Power to make rules.

11. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

With inflation and western influence in our country senior citizens are being neglected. This is against our Indian culture and philosophy. We, as responsible citizens cannot keep quiet. With the increase in life expectancy, the number of senior citizens is increasing regularly. However, in many cities in the country thousands of old citizens living alone have been target of criminals and many have lost their lives due to peoples' greed. It is our duty to provide them with security both personal and financial for their welfare.

These are the people who have contributed everything for the family, the society and the country. It is inhuman and immoral to neglect our senior citizens. They must be provided complete financial security including 'Roti, Kapra and Makaan'. Not only this they should be provided with mental and psychological support.

Hence this Bill.

SANTOSH BAGRODIA

FINANCIAL MEMORANDUM

Clause 4 (1) provides that appropriate Government shall give subsistence allowance to every destitute senior citizen. Sub-clauses (1), (2) and (3) of clause 5 provide for the establishment of senior citizen homes and other facilities for the benefit of the destitute senior citizens residing in it. Clause 7 also provides for the other welfare measures to be taken for senior citizen by the appropriate Government. Provisions of clause 8 is related with the appropriation made by Parliament in this behalf to provide adequate funds for the purpose of the Act.

The Bill, therefore, if enacted will involve expenditure from the Consolidated Fund of India. It is estimated that an annual recurring expenditure of about one thousand five hundred crore is likely to be involved from the consolidated Fund of India. A non-recurring expenditure of about one thousand crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill empowers the Central Government to make rules for carrying out the purpose of the Bill. As the matters will relate to detail only, the delegation of legislative power is of a normal character.

IX

BILL NO. XIX OF 2009

A Bill to provide for the protection of women from discrimination, sexual exploitation and for the basic facilities like creches, recreational facilities, maternity benefits, hostel and transport facilities, etc. and for the welfare measures to be taken by the employers and the State for the women employees working in government establishments, public sector enterprises including banks and ports, educational institutions including universities, colleges and schools, factories, mines, plantations, agricultural fields, orchards and such other places and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Working Women (Protection, Basic Facilities and Welfare) Act, 2009.

(2) It extends to the whole of India.

(3) It shall come into force with immediate effect.

Short title,
extent and
commencement.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appropriate government" means in the case of a State, the Government of that State and in other cases, the Central Government;

(b) "child" includes a still born child;

(c) "employer" means,—

(i) in relation to an establishment which is under the control of an appropriate government, the person or authority appointed by the appropriate government for the supervision and control of the employees or where no person or authority is so appointed, the head of the establishment;

(ii) in relation to an establishment under any local self-government or authority, the person appointed by such authority or local self-government for the supervision and control of the employees or where no person is so appointed the Chief Executive Officer by whatever name called of the local self-government or the authority as the case may be;

(iii) in other cases, the person who or the authority which has the ultimate control over the affairs of the establishment;

(d) "establishment" include an office of the appropriate government, quasi government or department including telegraph office, post office, telephone exchange etc., a mine, a plantation, an agricultural field, a hospital or nursing home, a shop or any business establishment, a brick kiln, construction site, any banking establishment, any private office or house, any school, college, university or like institution, establishment for the exhibition of equestrian, acrobatic and other performances and any other such place where a woman is employed for any work whatsoever;

63 of 1948.

(e) "factory" means a factory as defined in the Factories Act, 1948;

14 of 1947.

(f) "industry" means an industry as defined in the Industrial Disputes Act, 1947;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "sexual harassment" includes any unwanted verbal or gestural sexual advances, sexually explicit and derogatory statements or remarks, avoidable physical contacts, touching or patting, suggestive remarks, sexually slanted and obscene jokes, comments about physical appearance, compromising invitations, use or showing pornographic material, demands for sexual favours, threats, innuendos, physical assault and molestation of and towards working women by their male superiors, colleagues or any one who for the time being is in a position to sexually harass the working women;

(i) "working woman" mean a woman who is employed, whether directly or through any agency or contractor, as the case may be, for wages or similar other considerations in any establishment, factory or industry.

3. It shall be the duty of the appropriate government to ensure that no discrimination is done by any establishment on gender basis with its women employees particularly in the matter of payment of wages which are paid to her male counterpart in such establishment.

Appropriate government to ensure non-discrimination and equal wages for the working women.

4. (1) Notwithstanding anything contained in any other law for the time being in force, every employer shall provide basic childcare and facilities essential for the children of women workers in his establishment with provision of minimum needs like milk, tiffin, clothes, toys and trained *ayahs* to look after children of women working therein.

Childcare facilities.

(2) The appropriate government shall ensure that every employer of an agricultural field provides mobile childcare facilities for the working women in his establishment:

Provided that two or more of such employers may provide such childcare facilities collectively for their establishments.

(3) The appropriate government shall open such number of creches at such places as it may deem necessary for carrying out the purposes of this Act.

Recreational facilities.

5. The appropriate government shall ensure that every employer provides retiring rooms with facilities like bathroom, latrine, drinking water at the workplace or worksite of the working women and also provide recreational facilities like radio, television, etc. for them and their children.

Security arrangements.

6. The appropriate government alongwith the employer shall provide adequate and proper security measures for the safety of working women in the establishment, factory or industry, as the case may be, as well as to and from their places of residence.

Maternity facilities.

7. It shall be the duty of the appropriate government to ensure reservation of beds and proper and adequate maternity facilities for the working women in hospitals and dispensaries having indoor patient facilities therein.

Hostel and transport facilities.

8. The appropriate government as well as an employer shall provide hostel and residential facilities both for married and unmarried working women nearest to their place of work and shall also provide cheap, safe and quick transport facilities for such working women.

Protection from health hazards.

9. The appropriate government shall ensure protection from health hazards particularly for the women working in factories or industries like beedi, tobacco, stone mines, cashew, fish processing, salt, silk, construction projects and such other establishments as may be prescribed.

Register of working women.

10. (1) The appropriate government shall maintain a register of working women in such manner and at such place as may be prescribed;

(2) The appropriate government may require an employer to furnish for the purposes of this Act, such statistical and other information, in such form and within such period as may be prescribed.

Prohibition of sexual harassment of working women.

11. (1) The sexual harassment of any working woman in any manner whatsoever at her work place is hereby prohibited.

(2) Whoever contravenes provisions of sub-section (1) shall be guilty of an offence under this Act.

Penalty.

12. Notwithstanding anything contained in any other law for the time being in force, whoever sexually harasses a working woman in any establishment, factory or industry shall be punishable with imprisonment for a term which shall not be less than five years but may extend to seven years and also with fine which may extend to five lakh rupees.

Burden of proof.

13. Notwithstanding anything contained in any other law for the time being in force the onus of proving innocence shall be on the accused and the sexually harassed woman shall have the right to plead evidence in rebuttal.

Pleading of the case.

14. The case of a sexually harassed woman worker at a work place shall be pleaded either by herself or with her consent by a woman's organization or the trade union of which she is a member, as the case may be.

Trial to be held in camera.

15. The trial of an offence under this Act shall be held in camera if the harassed woman so desires.

16. The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force; but save as aforesaid the provisions of this Act shall be in addition to and not in derogation of any other law for the time being applicable to the working women.

Act to have
overriding
effect.

17. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to
make rules.

STATEMENT OF OBJECTS AND REASONS

Despite the unabated female foeticides and dwindling population of girls in the country and the conservative attitude of the society towards women, more and more women are venturing out of their houses to work to support their families. As a result the number of working women in government services, factories, industries, commercial establishments, agriculture, mines, fish processing sector, silk industry and so on so forth is increasing day by day, but their conditions of employment need amelioration. Various basic and essential facilities which are supposed to be made available to the working women by the government and private employers are either absent or not adequate and satisfactory. Unfortunately, in most of the private sector including agricultural sector, the facilities are rather minimal or negligible and the working women are an exploited lot there. The existing labour laws also do not provide for proper medical, educational, recreational and other facilities for the working women and their children. As regards security, transport, accommodation and facilities for some specific problems which are peculiar to women only are concerned, no enactment has been made so far. In many establishments they are not given equal pay for equal work. This discrimination has to be stopped.

Of late, cases of sexual harassment of working women are also on the rise. Cases of sexual harassment of women at the work places occur but more often these are not reported for fear of social ostracism, family pressure or reprisal in the form of threats and discriminatory treatment. Supreme Court of India in the case of *Vishakha and Others Vs. State of Rajasthan and Others* has taken a very serious view on the sexual harassment of working women at their work places and laid down norms and guidelines to be followed by the employers but even these guidelines are not being followed in letter and spirit.

Hence it has become necessary to provide adequate welfare measures for the working women.

Hence this Bill.

SANTOSH BAGRODIA

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for childcare facilities, whereas clause 5 for recreational facilities and clause 7 for maternity facilities. Similarly clause 8 provides for hostel and transport facilities for the working women. The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of Rs. two thousand crores may involve as recurring expenditure per annum.

A sum of Rs. five thousand crores may also involve as non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 17 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

V. K. AGNIHOTRI,
Secretary-General.